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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,551	01/13/2004	Michael T. Wisor	5500-95300	2674
53806	7590	12/20/2006	EXAMINER	
MEYERTONS, HOOD, KIVLIN, KOWERT & GOETZEL (AMD)			PATEL, NITIN C	
P.O. BOX 398			ART UNIT	PAPER NUMBER
AUSTIN, TX 78767-0398			2116	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		12/20/2006	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)
	10/756,551	WISOR, MICHAEL T.
	Examiner	Art Unit
	Nitin C. Patel	2116

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 20 November 2006.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-19,21-35 and 38-45 is/are pending in the application.
- 4a) Of the above claim(s) 20,36 and 37 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-19,21-35 and 38-45 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This is in responsive to amendment filed on 20 November 2006.
2. Claim 20, and 36 – 37 have been canceled.
3. Claims 38 – 45 have been added new.
4. Claims 1 – 19, 21 – 35, and 38 – 45 are currently pending with the application.

Claim Objections

5. Claim 25 is objected to because of the following informalities:
6. In the claim 25, replace “the first instructions” in line 3 on page 5 with ---- the first one or more instructions--- as first one or more instructions have been previously recited in the claim.

Appropriate correction is required.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

7. Claims 1 – 19, 21 – 35, and 38 – 45 are rejected under 35 U.S.C. 101 raises a question as to whether the claim is directed merely to an abstract idea that is not directed to a practical application of such judicial exception because the claim does not require any physical transformation and the invention as claimed does not produce a useful, concrete, and tangible results to form the basis of statutory subject matter under 35 U.S.C. 101.
8. In the method claim 1, the steps described “(i) incorporation into boot sequence; or “ is not patent eligible subject matter, as it is not producing a concrete, useful, and

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tangible results to form the basis of statutory subject matter under 35 U.S.C. 101, “(ii) access by the boot code sequence during execution...” is not patent eligible subject matter, as it is also not producing a concrete, useful, and tangible results to form the basis of statutory subject matter under 35 U.S.C. 101.

9. In the method claim 21, the steps described “(i) incorporation into boot sequence; or “ is not patent eligible subject matter, as it is not producing a concrete, useful, and tangible results to form the basis of statutory subject matter under 35 U.S.C. 101, “(ii) access by the boot code sequence during execution...” is not patent eligible subject matter, as it is also not producing a concrete, useful, and tangible results to form the basis of statutory subject matter under 35 U.S.C. 101.

10. In the method claim 35, the steps described “(i) incorporation into boot sequence; or “ is not patent eligible subject matter, as it is not producing a concrete, useful, and tangible results to form the basis of statutory subject matter under 35 U.S.C. 101, “(ii) access by the boot code sequence during execution...” is not patent eligible subject matter, as it is also not producing a concrete, useful, and tangible results to form the basis of statutory subject matter under 35 U.S.C. 101.

11. Claims 2 – 19, 21 – 34, and 38 – 45 are depending upon the rejected independent claims 1, 21, and 35 respectively and therefore are also rejected under 35 U.S.C. 101.

Response to Arguments

12. Applicant’s arguments, see remarks under, “ The Claims are Patentable over the AAPA” on page 9 – 12, filed on 20 November 2006, with respect to 102(b) rejection

have been fully considered and are persuasive. The 102(b) rejection of claims 1 – 19, 21 – 35, and 38 – 45 has been withdrawn.

13. Applicant's arguments, see remarks under, "Section 112 rejection" on page 12 – 13, filed on 20 November 2006, with respect to 112 second paragraph rejection have been fully considered and are persuasive. The rejection of claims 1 – 36 under 112 second paragraph has been withdrawn.

14. In reference to amendment to claim 25 filed on 20 November 2006, with respect to 112 second paragraph lack of antecedent basis rejection have been fully considered and is persuasive. The rejection of claim 25 under 112 second paragraph lack of antecedent basis has been withdrawn.

15. In reference to amendment to claims 21 – 34, filed on 20 November 2006, with respect to 101 rejection have been fully considered and is persuasive. The rejection of claims 21 – 34 under section 101 has been withdrawn.

16. Applicant's arguments, see remarks under, "Section 101 rejection" on page 13, filed on 20 November 2006, with respect to not patent eligible subject matter, as it is not producing a concrete, useful, and tangible results to form the basis of statutory subject matter under 35 U.S.C. 101 have been fully considered but they are not persuasive as explained in rejection under 35 U.S.C. 101. And therefore, the rejection of claims 1 – 19, 21 – 35, and 38 – 45 under 101 is maintained.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nitin C. Patel whose telephone number is 571-272-3675. The examiner can normally be reached on 6:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rehana Perveen can be reached on 571-272-3676. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Nitin C. Patel
December 14, 2006



THUAN N. DU
PRIMARY EXAMINER